

A NEW PRINCIPLE OF INTERNATIONAL LAW

BY

A. M. M. MONTIJN, LL.D.

Barrister, The Hague



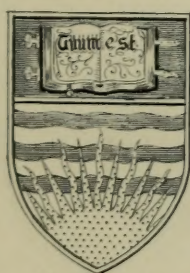
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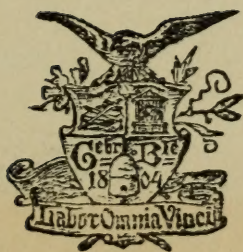
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THE UNIVERSITY OF CHICAGO

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Introduction

“Wisdom is better than weapons of war.”

Ecclesiastes, 9: 18.

In the midst of the dreadful world events one asks oneself: How much longer? How much longer shall this slaughter of human beings last? Until one side or the other has been vanquished? Thus have wars ended up to the present. But the peace, which then followed, was generally not of long duration. Indeed a peace, to which the vanquished have been driven, gives them no rest, but on the contrary incites to fresh conflict. It has always been so up to now, and so will it be, if in this case also, peace is imposed upon the vanquished.

They who wish for a permanent peace, are therefore zealous for a peace by arrangement. But how to induce the belligerents to open negotiations; and even should they be disposed thereto, how to bring about a reconciliation?

There is one power in the world, by nature humble and yet elevated above all other worldly powers; a power mightier than nature, which is made subservient to its will; a power, whose sphere, originally insignificant, is continually extending; a power, to which all people, willingly or unwillingly, must finally submit; a power, absolutely unbiassed and reliable, placed above all parties, thus exceptionally fitted to judge; a power, which elevates its

adherents and crushes the refractory; finally, a power, which by the majesty of its authority, reconciles the most conflicting interests: *Science*. In the following pages a brief appeal is made to this power, in the firm conviction that only it, the whole of the objective truth to everyone alike (1), can bring salvation. This conviction has encouraged me in the publication of this essay.

October 15th., 1918.

A. M. M. M.

(1) Mr. C. W. OPZOOMER, *Wetenschap en Wijsbegeerte* (Science and Philosophy) page 14.

States organization

Whereas man is by nature careful of the preservation of his life, and war menaces it, so the fight against war is as old as war itself. In this struggle, man has not, as yet, been successful. An effective remedy against war has not yet been found; neither one that prevents war, nor one that causes it to cease. Although, of course, one has preferably sought to discover a means to prevent war — prevention being better than cure — it is no less true, that, at present, now war is in being, it is of great practical importance to seek a means of curtailing the existing calamity.

As means for the prevention of war, the following ideas, amongst others, have been promulgated; negotiation, arbitration, drawing of lots, a league of nations, universal disarmament, an international council of conciliation, an international tribunal with an international army and navy to enforce its decrees, in short an international legislative organization among the States.

According to GROTIUS (1583—1645), there are three ways in which controversies may be prevented from breaking out into war. The first is Conference; the second Arbitration; the third way is by lot.

In support of the first GROTIUS quotes CICERO: "Whereas there are two ways of settling a dispute, one by discussion, the other by force, and whereas the former is natural to man and the latter to animals, one should not resort to the latter method until it has been proved impossible to make use of the former (De Off. I.)". (1)

He finally quotes King THEODORIC's saying: "It is only then

(1) HUG. GROTII, De jure belli ac pacis, Liber II, Caput XXIII, § VI, and § VII, 1.

of service to resort to arms, when the opponent is entirely lacking in a sense of justice (Cass. III, Var. I)" (1).

As regards arbitration GROTIUS quotes THUCYDIDES: "It is wicked to proceed against him as a wrongdoer, who is ready to refer the question to an Arbitrator (Lib. I, c. 85)". He also quotes DIODORUS (Lib. IV, c. 67), according to whom, ADRASTUS and AMPHIARAUS referred the question concerning the Kingdom of Argos, to the judgment of ERIPHYLE. Further GROTIUS points out that for the settlement of the dispute between the Athenians and the Megareans, concerning Salamis, three Spartan judges were chosen, and gives many other instances of arbitration in ancient times (2). Especially Christian Kings and States, he considers, are bound to try this way of avoiding war. According to GROTIUS, it would be useful and indeed almost necessary, that Congresses of Christian Powers should be held, in which the controversies which arise among some of them may be decided by others who are not interested, and in which measures may be taken to compel the parties to accept peace on equitable terms (3).

As regards the third remedy, by lot, GROTIUS appeals to DION CHRYSOSTOMUS, who recommends this method in the second of his orations "In Fortunam" and, much earlier, to SOLOMON in Proverbs, chapter 18, verse 18 (4). He does not altogether reject the idea of the duel, whenever two persons, whose quarrels would otherwise involve whole nations in disaster, are prepared to let arms decide between them (5).

Leaving aside the AMPHICTYONIC COUNCIL, whose origin goes back to Greece's most ancient history, and whose sphere seems to have been more of a religious than a political nature (6), then one finds the idea of an international organization between the States, first in the *Mémoires du Duc DE SULLY*, in which the latter

(1) HUG. GROTII, *De jure belli ac pacis*, Liber II, Caput XXIII, § VII, 2.

(2) Ibidem § VIII, 1.

(3) Ibidem § VIII, 4. W. EVANS DARBY, *International tribunals* (1900) page 48 etc.

(4) HUG. GROTII, etc. § IX.

(5) Ibidem § X.

(6) FREEMAN (*History of fed. gov.* page 102) quoted by W. EVANS DARBY, *l. c.* page 8.

mentions a plan "Grand dessein de Henri IV" (1603), according to which the whole of Europe should be divided proportionately between a certain number of Powers, which would have nothing to envy one another for on the ground of equality, and nothing to fear on the ground of the Balance of Power. Their number was to be reduced to fifteen and they were of three kinds. The General Council in which all Powers of the Christian Republic should be represented, should continually assemble as a Senate to deliberate on affairs as they arose, to occupy themselves with discussing different interests, to pacify quarrels and to throw light upon and oversee the civil, political and religious affairs of Europe, whether internal or foreign. Besides this General Council there should be a certain number of smaller ones, e. g., six, for the special convenience of different cantons, resorting by appeal to the General Council, whose decisions should have the force of irrevocable and unchangeable decrees (1).

WILLIAM PENN (1644—1718) in 1693/94 evolved a scheme for a permanent Sovereign Tribunal, an International Parliament or Congress, which should exercise judicial functions as well as deliberative, and also act as a Committee of Safety. This Tribunal should be called the Sovereign, or Imperial, Diet, Parliament, or States of Europe. Before this Sovereign Assembly should be brought all differences depending between one Sovereign and another that could not be adjusted by diplomatic means, before its sessions began. Should any of the Sovereignities constituting this Imperial Diet refuse to submit their claims or pretensions to the Diet, or to accept its judgment, and should seek their remedy by arms, or delay compliance beyond the time specified, all the other Sovereignities, uniting their forces, should compel submission to, and performance of, the sentence and payment of all costs and damages. The composition of this Imperial Diet should be by proportionate representation based upon the estimate of the yearly value of the respective countries (2).

(1) *Mémoires du DUC DE SULLY*, VI, 129 et seq., quoted by DARBY, page 11 et seq.

(2) DARBY, page 16 etc.

The aforesaid scheme of HENRI IV was elaborated by the Abbé DE SAINT PIERRE (Charles Irénée Castel de St. Pierre (1658—1743). In that elaboration the following stipulations, amongst others, appear.

There shall be from this day forward a Society, a permanent and perpetual Union between the undersigned Sovereigns, and, if possible, among all Christian Sovereigns, to preserve unbroken peace in Europe.

No Sovereign shall take up arms, or commit any hostility, but against him who shall be declared an enemy to the European Society.

The Sovereign who shall take up arms before the Union has declared war, or who shall refuse to execute a regulation of the Society, or a judgment of the Senate, shall be declared an enemy to the Society, and it shall make war upon him, until he be disarmed, and until its judgment and regulations be executed, and he shall even pay the charges of the war, and the country that shall be conquered from him at the close of hostilities shall be for ever separated from his dominions.

If, after the Society is formed to the number of fourteen votes, a Sovereign should refuse to enter thereinto, it shall declare him an enemy to the repose of Europe, and shall make war upon him until he enter into it, or until he be entirely despoiled.

The assembly of the Senate shall provisionally be held at Utrecht.

When the Union shall employ troops against an enemy, there shall be no greater number of soldiers of one nation than of another;

In time of peace, after all the Sovereigns have signed, the most powerful shall keep up no more troops of his own nation than the least powerful.

The elaborated scheme appointed Committees of Conciliation, formed to reconcile differences between Sovereign and Sovereign. In case of failure the Senate should make a law for such cases. Should the Sovereign who was in the wrong not submit to this law, then the President of the Senate should pronounce a judgment by

name against the Sovereign whose claim or defence was not approved by the other Sovereigns. This arbitral judgment should be pronounced by a majority of votes provisionally, and six months afterwards definitively, on a second judgment by three-fourths of the votes; thus there would be always two judgments upon every dispute.

Finally the European Union should endeavour to procure in Asia a similar organization (1).

KANT (1724—1804) proposed to found International right upon a federation of free States (2). He considered the idea of perpetual peace to be impracticable. The political principles, however, which tend to that result, viz., to such a Union of States as shall serve as continual approximation thereto, are not themselves impossible; but as this approximation is a matter founded upon duty, and consequently upon the rights of men and of States, it is certainly practicable. Such a Union of single States, having for its object the preservation of peace, KANT called: "The Permanent Congress of Nations", to which every neighbouring State might be at liberty to associate itself. This voluntary Association of the various States should be at any time revocable. It is only in this way that the idea can be realised of establishing a public Law of Nations which may determine their differences by a civil method, by a law-suit as it were, and not by a barbarous one (after the manner of savages), that is to say, by war (3).

JOHN STUART MILL (1806—1873) proposed a federal Union of States, precluding the usual remedies, war and diplomacy, but in place thereof a real International Tribunal, which according to him, was one of the most prominent wants of civilised society (4).

These and similar schemes and ideas up to and including the results of the First Hague Peace Conference (1899) can be found

(1) DARBY, page 20 etc.

(2) Zum ewigen Frieden. Ein philosophischer Entwurf. 2. Abschnitt, 2. Definitivartikel (ED. HARTENSTEIN VI, page 420). DARBY, page 86.

(3) Die Metaphysik der Sitten, 1. Theil. Der Rechtslehre 2. Theil, § 61. (ED. HARTENSTEIN VII, pages 168/169). DARBY, pages 76/78.

(4) DARBY, page 90 etc.

fully detailed in the 3rd edition (published in 1900), of the work which appeared in 1897, of the then Secretary of the Peace Society, W. EVANS DARBY, "International Tribunals. A collection of the various schemes which have been propounded; and of instances since 1815". The said 3rd edition contains (besides those already mentioned) successively, the anti-war schemes of: PUFENDORF, DE VATTEL, JEREMY BENTHAM, SEELEY, BLUNTSCHLI, DUDLEY FIELD, LEONE LEVI, EDMUND HORNBY, the Bar Association of the State of New York, the American Peace Society (1840), A. P. SPRAGUE, the Sixth Peace Congress (held at Antwerp in the year 1894), CH. LEMONNIER, EMILE ARNAUD, the Institut de droit international, W. A. BUTLER, DORMAN B. EATON, and CEPHAS BRAINERD, the Sixth Inter-parliamentary Conference, A. CORSI, PASQUALE FIORE, W. EVANS DARBY himself, the International Law Association, the Congress of Buffalo (1899) and of the first Hague Peace Conference etc., together with the contents of several arbitration treaties. Some years ago the "Bureau international de la paix" of Berne organized, in the name of the Institution Narcisse-Thibault, a prize competition for arbitration and the organization of a complete legislative system among the nations. The first prize was awarded to E. DUPLESSIX for his reply entitled "La loi des nations, Projet d'institution d'une autorité internationale, législative, administrative et judiciaire. Projet de code de droit international public" (1). This title is sufficiently characteristic of the contents. J. M. VAN STIPRIAAN LUISCIUS was awarded honourable mention and medal for his reply: "L'avenir de l'arbitrage international" (2), in which he demonstrated the desirability of instituting a permanent Court of Appeal superior to the existing Hague Court of Arbitration, for which Court of Appeal he suggests regulations consisting of 166 clauses. In his book "Karakter" he proposes a joint permanent army (3).

The idea of an international police-force introduced by President ROOSEVELT in his Message of December, 1904 and

(1) Published in 1906 by L. LAROSE & L. TENIN, Paris.

(2) Published in 1907 by L. LAROSE & L. TENIN, Paris.

(3) Eleventh edition, page 27.

further discussed by him at Christiania in May, 1910, found an enthusiastic and talented supporter in the Leyden professor C. VAN VOLLENHOVEN, who, in the Autumn of 1910, considered that the Netherlands were called upon to take the initiative in the organization of an international police-navy (1). Finally, amongst the innumerable writings on these and similar subjects of recent times, special mention should be made of the various scientific reports, concerning the nine points of the Minimum Programme of the "Central Organization for a lasting Peace" (established in April 1915), published in the years 1916, 1917 and 1918 (2), as well as of the work of Dr. JACOB TER MEULEN which appeared in 1917: "Der Gedanke der Internationalen Organisation in seiner Entwicklung," 1300—1800 (3).

In some of these schemes the organization of the proposed tribunal is arranged even to the minutest detail. Yet all these schemes and ideas, however well-meant and well-conceived they may be, must prove fruitless, so long as the international legislative regulations, which an international tribunal would have to apply, are lacking. In order to settle disputes between States, it is not sufficient to appoint an international judge, but the first necessity is positive international law. And this latter is lacking and will continue to be so, so long as the States persist in the principle of their unlimited sovereignty. Indeed all law and order, also between the States mutually, is based upon the sacrifice of individual views concerning peculiar interests, to the views of a central authority concerning same. So long as that sacrificing inclination is lacking with States, there can be no question of law and order amongst them. And since there are no indications that in the near future

(1) See C. VAN VOLLENHOVEN'S:

"Roeping van Holland" (Calling of Holland) in *De Gids* 1910, pages 185 etc. and "De Eendracht van het Land" (The Union of the Country) 1913.

See also: "The Plan Prof. VAN VOLLENHOVEN" in public discussion. Stenographic report of the special meeting, held by the United Netherlands League "Vrede door Recht" on Thursday, May 22nd, 1913 at The Hague.

(2) Organisation centrale pour une Paix durable. Recueil de Rapports sur les différents points du programme minimum. Parties I—IV (1916—1918).

(3) Favourably criticized by W. H. DE BEAUFORT in *Themis* 1918, page 391.

States will be prepared to surrender some portion of their sovereignty, the idea of an international adjudication of State differences may be safely allowed to rest for the present. So long as States desire to retain their unlimited sovereignty, there can be no question of even the slightest possible organization amongst them. Organization invariably implies dependence of the constituent parts, and the idea of unlimited sovereignty excludes even the slightest dependence.

Still one sees and hears again even now, demonstrations of the desirability, even the necessity, of an organization between States. And it is not only theorists and good-natured Utopians, but statesmen in active service, even heads of governments, who recommend a League of States and who consequently consider it as being now possible. In contrast to the horrible reality the idea is therefore exceptionally attractive: All States of the world as autonomous parts of the World States League peacefully linked and bound together, the presidency changing each year amongst them, for their differences two tribunals — one in first instance, one in appeal — both domiciled in the Peace Palace at The Hague, and for the execution of their judgments and sentences a joint army: the League army in Belgium, and a joint navy: the League navy in the World Sea! So long, however, as the States decline to substitute autonomy for their Sovereignty, must this idea, more's the pity, remain an idea.

II

A new principle

“L'équilibre des sociétés n'est instable
que par la gêne imposée aux individus
dans leur franche expansion.”

ELISÉE RECLUS (1).

If therefore, so long as States individually persist in their attitude of unlimited Sovereignty — and this will be the case at present — every international legislative organization for a peaceful *settlement* of disputes arising between them is impossible, it is another question, whether, in case a means were to be found to *prevent* such disputes, States while completely maintaining their own Sovereignty and respecting that of others, would not from self-interest and therefore voluntarily proceed to apply such means. And indeed why should not they do that? Does not every sovereign State strive to make the security of its sovereignty as complete as possible, and does it not attain this by diminishing the differences which endanger its sovereignty? It only remains therefore to discover such a means.

How therefore to prevent disputes? That is the question.

There is no better means of preventing disputes than by respecting the interests of others.

Now the interest of a State concerns in the first place its composition and therefore its constituent elements: people and territory. The people and the permanent possession of part of the earth, form together the indispensable condition of its existence. Without people a State is inconceivable, but equally so without territory. Nomadic Bedouins do not form a State.

(1) *L'homme et la terre* (1905), t. I, Préface page III.

People and soil, bound in their mutual relations to each other, form as dual-unity, the organism: the State (1).

The people are apparently of the greatest importance to the State: *salus populi suprema lex*. But the interest which the State has in its territory is certainly not less. Each State needs a part of the earth's surface, exclusively available for itself, as its subjects cannot exist without the soil and its products. As however, both, people and territory, together, form one organization, one cannot say which of them is of greater interest for the State. As essential parts of the State-organism neither of them leads an independent existence, but they are mutually dependent on each other, correlative, both as a means as well as an end, both of equal importance for the State.

The importance of people and territory, as essential State elements, first appears in the proportion that one bears to the other. On the correctness of this proportion a State depends for its coherence, structure, vital power and its civilization (2).

In the thinly populated State the widely scattered families almost entirely supply their own wants and needs. The division of labour is of a low standard and the great advantage, which a proper division of labour derives from the forces of nature, is hardly available for the people in such a State (3). In consequence

(1) Dr. F. RATZEL, *Politische Geographie* (1903), page 6.

(2) Already in 1874 E. BEHM wrote (*Ergänzungsband VIII, 1873—1874, Ergänzungsheft no. 35 zu PETERMANN'S Geographischen Mittheilungen* "Die Bevölkerung der Erde", page 91):

"Das mehr oder weniger dichte Beisammenleben der Menschen hängt innig mit der Wohlfahrt, der Beschäftigung, dem ganzen Kulturstand zusammen und wie es durch die Vergangenheit des Volkes bedingt ist, so übt es auch einen mächtigen Einfluss auf die Fortentwicklung desselben. . . . Der auf den ersten Blick so wenig besagende Zahlenausdruck für die Volksdichtigkeit zeigt sich daher bei näherer Prüfung als das Produkt vieler, tief in das Wohl der Menschen eingreifender Vorgänge und Zustände, als ein fein fühlendes Thermometer für Veränderungen in den socialen Verhältnissen eines Volkes, und die Volksdichtigkeit ist daher ein Thema von ausserordentlicher, ja von unerschöpflicher Fülle".

(3) Dr. F. RATZEL, *Anthropo-Geographie*, II (1891), page 233.

of its defective industry, the production of the thinly populated State is scantier than it might be, and, owing to lack of communication and means of promoting same, its trade languishes. Its exports are easily exceeded by its imports and consequently the trade balance shows unfavourably. A thinly populated State is weak. Neither salutary internal influence nor external power can emanate from such a State. Having slight mutual intercourse, the people remain uncivilized and the area of the thinly populated State is too great to defend against hostile attacks. Extensive territory for a State, comparatively weak numerically, is no blessing; to strive to obtain or retain same, is unwise.

Should the density of population increase, there arises after some time a condition, when the soil is no longer able to feed the people, and consequently they must devote themselves more and more to trade and industry (1). The division of labour with its happy results is introduced, and the State commences to flourish. If the people be industrious, then civilization rises in the same ratio as the density. The more the industrious people come in contact with each other, the greater the intercourse, the fuller the social life, so much the greater is the necessity to respect the interests of others, so much the greater the esteem of one's fellow-beings, so much the higher the standard of civilization (2).

But a State may also be too densely populated, and, should such be the case, it may cause both internal as well as external dangers. Internal, because its people must be able to exist on what its own soil produces, in case other States stop the export of their produce. Utilizing their sovereign rights, the other States are at any moment entitled to close their frontiers against exports, so that, in justice, it is the duty of each State to be able to provide for the support of its population. Externally, because too great a density of population incites to expansion. Greater density on the one side than on the other side of the frontier between two States, necessarily exercises pressure on the frontier in the direction from the more

(1) Op. cit., page 242.

(2) Op. cit., page 255 etc.

populated to the less populated State. Of course the tension caused by too great a density may be somewhat relieved by emigration, and also the gradual overflow into less densely populated territory on the borders of the State may tend in this direction (1). Should however the population continue to increase, the tension will again become great and be the continual source of danger for sudden, violent relaxation and of removing the land-marks from the too thickly populated State to within the frontiers of the more thinly populated territory of its less powerful neighbour (2).

The entire surface of the earth is now divided amongst all the States, so that no State is able to extend its territory without encroaching on the territory of other States. And it goes without saying that the weaker and more dispersed neighbour comes first in such a case.

The population of Europe has been constantly increasing during the last two centuries; at first gradually, afterwards rapidly, and recently alarmingly (3). From the year 1800 to the year 1887 the population doubled: 175 millions grew to 350 millions (4) and less than a quarter of a century later (about the year 1910) the total of its inhabitants had risen to 447 millions (5). Putting aside the question as to what is to be thanked or blamed (6), for this extraordinary increase of the population, the fact is incontestible. But equally incontestible is the great danger that, if the surplus population, by agreement of the States, is not guided into proper

(1) E. RENAN, quoted by Dr. F. RATZEL, *Anthropo-Geographie I* (1882), page 453, speaks in his *Hist. des langues sémitiques II*, 319 of "infiltration lente".

(2) Dr. F. RATZEL, *Anthropo-Geographie I* (1882), page 116 etc and *Politische Geographie* (1903), page 218.

(3) Dr. ALWIN OPPEL, *Die progressive Zunahme der Bevölkerung Europas* (Petermann's *Mitteilungen* 1886, page 134).

(4) Dr. F. RATZEL, *Anthropo-Geographie II* (1891), page 281.

(5) *Annuaire international de statistique*, publié par l'office permanent de l'institut international de statistique, 1916, I, page 3.

(6) About this subject: PAUL LEROY-BEAULIEU, *La question de la population* (1913) *passim*.

channels, it will try to force a way into the less thickly populated territory of the weaker neighbour.

The interest of all States, the too thickly as well as the too thinly populated, consequently requires that the density of population in all States, shall so far as possible be equal. And the respecting of the interest of each other, will, in this regard, be so much the easier, because, in doing this, one will be serving one's own interests at the same time.

According to the "Annuaire international de statistique, publié par l'office permanent de l'institut international de statistique", appearing in the Autumn of 1916 (1), the population, area and density of population of the European States in the years 1910—1912, were as follows:

STATES.	POPULATION.	AREA.	DENSITY PER sq. Km.
Germany	64.925.993	540.858	120.0
Austria-Hungary	51.355.331	676.615	75.9
Belgium	7.423.784	29.451	252.1
Bulgaria	4.337.513	96.346	45.0
Denmark	2.860.259	143.216	20.0
Spain	19.950.817	505.197	39.5
France	39.192.133	536.464	73.1
Great Britain and Ireland .	45.221.615	315.663	143.3
Channel Islands & Isle of Man }	148.915	767	194.2
Gibraltar	19.120	5	3.902.0
Malta	211.564	304	69.6
Greece } (since 1913) . .	2.631.952	63.211	42.0
Crete }	310.200	8.808	35.2
Italy	34.671.377	286.610	120.9
Luxemburg	259.891	2.586	100.5

STATES.	POPULATION.	AREA.	DENSITY PER sq. Km.
Montenegro	250 000	9.404	26.6
Norway	2.357.790	322.909	7.3
The Netherlands	5.858.175	34.186	171.4
Portugal	5.960.056	91.948	64.8
Rumania	7.234.919	130.177	55.6
Russia (Europe)	133.934.997	5.293.521	25.3
Servia	2.911.701	48.303	60.3
Sweden	5.522.403	448.092	12.3
Switzerland	3.753.293	41.298	90.9
Turkey (Europe)	6.130.200	169.301	36.2
Andorra	5.231	453	11.5
Lichtenstein	10.716	159	67.4
Monaco	19.121	21	923.7
San Marino	10.828	59	182.3
Europe	447.479.894	9.795.929	45.7

One sees that the density of population in the States of Europe varies considerably. If one takes the average figure of 45.7 as a standard, then Germany, Austria-Hungary, Belgium, France, Great Britain and Ireland cum annexis, Italy, Luxemburg, The Netherlands, Portugal, Rumania, Servia, Switzerland, Lichtenstein, Monaco and San Marino appear to be too thickly, and the remaining States too thinly populated. Therefore to equalize these differences of density, the States mentioned would have to extend their territory, while the remaining States would have to undergo a curtailing of same. In this connection however one must not lose sight of certain facts.

In the first place as regards extension of territory, one need not consider those States, which in comparison with their neighbours are so weak that there is not the least fear of expansion from their side. To this category belong Belgium, Luxemburg, The Netherlands, Portugal, Switzerland, Lichtenstein, Monaco and San Marino.

Moreover Great Britain and Ireland, strictly speaking, cannot extend its territory, because its frontiers are sea frontiers and therefore immovable. But also in a wider sense, it need not be considered

in regard to extension, because a great part of its colonies and dominions are situated in the temperate zone, so that its surplus population may emigrate thither for an almost immeasurable period. There thus remain: Germany, Austria-Hungary, France, Italy, Rumania and Servia.

Should now to each of these be granted an extension of territory in ratio with the aforesaid figures of their density to the average density figure 45.7? This would not be just. As we gather from the said statistics, the density figures mentioned herein, are obtained by dividing the total square kilometres of the area of the States of Europe into the total of their inhabitants. By this means however one does not obtain a correct idea of the actual density. The question as to how thickly or thinly a country is peopled, is based upon the assumption, that they can in reality live in the country, that the country is habitable for people in general. Indeed that which is uninhabitable for man, is neither thickly nor thinly peopled because it is not peopled at all. In order to obtain the actual density of the population of a State, one should not therefore divide by the total of the square kilometres of its entire territory, but only by the total of the square kilometres of its territory, in so far as that territory is habitable for man. What is uninhabitable for man does not count.

Such uninhabitableness of territory may be twofold: absolute or relative.

The extreme North is absolutely uninhabitable for man. Nova Zembla, 92,321 sq. Km. in area, and belonging to Russia, is, on account of the cold, absolutely unfit for human habitation. Equally so is the interior of Iceland (104,785 sq. Km. in size), consisting, as it does, almost entirely of a fairly level, volcanic plateau of basalt, above which smaller ice-plains are found (1). In answering the question as to how thickly Europe is actually populated, that part of Europe, which for the habitation of man is absolutely excluded, should not be counted but should be deducted from the total area

(1) Prof. Dr. TH. THORODDSEN, *Island. Grundriss der Geographie und Geologie. Ergänzungsheft zu PETERMANN'S Mitteilungen* n°. 152 (1905) and n°. 153 (1906)

of Europe before making the division. The statistical figure 45.7 for the density of the population of Europe is consequently too low; how much too low cannot be further indicated here. The answer to that question depends on the extent of land in Europe absolutely unfit for human habitation, and therefore lies within the sphere of anthropo-geography, the students of which will doubtless be able to answer the question with accuracy.

Relatively uninhabitable for man are those parts of the earth's surface, which in their natural state are not habitable, but which may be made so, e. g., forests, lakes, swamps etc. So long however as this has not been done, they are uninhabitable for man and therefore should not be included when deciding the density figure (1). In the aforesaid statistics the forests, lakes and swamps are nevertheless included in the area of the States (2). Although uninhabitable country they have been counted, all the same, in estimating the figures of the density of the population, consequently those figures are also incorrect. They are too low; how much too low again cannot be further indicated here. The estimating of that part of the soil, which is really habitable for man, is the task of the anthropo-geographer. Moreover as only general principles are discussed here, it is quite unnecessary to go further into the question. Probably the raising of the said density figures on the grounds of relative uninhabitableness is also of slight importance to our purpose. Our aim really is, to allot extension of territory to the too thickly populated States of Europe in ratio with the density of their population to the average density figure of Europe. If now, upon grounds of relative uninhabitableness, the density figures of each State become higher than those in the said statistical table, the average density figure for Europe in that table also becomes higher, and thus the relations between the density figures of the different European States and the average density figure for Europe remain about the same.

The idea of relative uninhabitableness is really worthy of

(1) HARALD WESTERGAARD, *Die Grundzüge der Theorie der Statistik* (1890), page 142.

(2) See *Annuaire*, pages 37—39: *Observations sur la superficie*.

notice in another respect. Extension of territory may be necessary in order to diminish the too great density of population. It goes without saying however that only in case of extreme necessity should such extension be resorted to. If in another, less drastic manner, the same object may be attained, then preference should be given to same, in any case this should be the first step. Before taking the figure of density as a starting point for the degree of extension of the territory of a too densely populated State, one would have to ascertain, to what extent the clearing of forests and draining of lakes and swamps, might aid in remedying the evil of too great a density. Germany, for instance has 25 per cent of forest and more than 5 per cent of marsh land (1). If one adds thereto the correct percentage for lakes, then it is obvious, that, by clearing forests and draining swamps and lakes, Germany could appreciably diminish the strain of its too great density. France has only 16 per cent of its soil forest land, so that the timber therefrom is not nearly sufficient for its needs, and very much wood has to be imported (2). France therefore is unable, by deforesting, to diminish its density figure. On the contrary, since the year 1860 (3), attempts have been made to encourage afforestation by new plantations on mountain tops and slopes (4). And so, with regard also to other too thickly populated States, one must ascertain to what extent, at present uninhabitable parts of the country, may be made habitable.

Here, for the third time, is opened up a new field for the research of the anthropo-geographer. He will have to decide how much forest may be cleared without unduly diminishing the timber supply and without damage to agriculture and game, and how much water transformed, without too great an injury to fishery, into habitable land. For the conservation of forest and water,

(1) RATZEL, *Pol. Geographie*. (1903) page 149.

(2) E. LEVASSEUR, *La France et ses colonies* (géographie et statistique) II, page 120. ALFRED KIRCHHOFF, *Länderkunde von Europa*. volume 2, 1st half (1890), pages 97 and 104.

(3) Loi du 28 juillet—7 août 1860, relative au reboisement des montagnes (DALLOZ, *Recueil périodique* 1860, 4, page 127).

(4) LEVASSEUR, l. c. page 118/119. KIRCHHOFF, l. c. page 104.

motives may also be adduced with regard to the rain-fall (1), the health of the people and aesthetics. And that even strategical considerations must be taken into account in this connection, the battle near the Masurian lakes, still fresh to memory, will render clear to everyone. The question, keeping all this in view, as to what the actual density of a State is, which must be taken into account, may be difficult to answer, but for the anthropogeographer it is certainly not impossible. So long, however, as that question is not thus answered, one will have to rest satisfied with the aforesaid statistical density figures, while awaiting the correction of same.

For France, the place where the expansion of territory must take place, is not doubtful. On the West and partly on the South, the sea renders expansion absolutely impossible; and so far as it is not entirely impossible to the South, the Pyrenees provide a practically insurmountable barrier. Also to the East, with the exception of Lorraine and a part of Alsace, high mountains hinder territorial growth. Expansion in a Northerly direction would result in the destruction of Belgium. France can therefore only expand in Lorraine and the plains of Alsace.

Also for Germany the direction of its expansion could only be from West to East. Indeed, if France cannot extend except from West to East, it naturally follows that Germany, where it borders on France, cannot extend from East to West. Further such expansion of Germany over Belgium, The Netherlands or Denmark would be equivalent to the elimination of those States. To the North Germany borders on Denmark and the sea, and territorial expansion to the South would be equivalent to the destruction of Switzerland. Consequently Germany must also expand to the East.

For Italy the same applies; except in the valley of the Adige, its territorial future lies also in an Easterly direction, since, expansion in other directions by land, except along the Adige is shut off by the Alps. And as Germany and Italy must both develop territori-

(5) "Les montagnes privées de végétation ne retiennent plus les eaux de la pluie, et ces eaux, descendant tout à coup dans les vallées, deviennent une cause d'inondation" (LEVASSEUR, l. c. page 118).

ally in an Easterly direction, Austria-Hungary is thereby pressed in the same direction, in consequence of which, Rumania in its turn, is also driven that way, and in the same direction pressure is exercised on Servia. The Danube preventing Servia from expanding to the North and the North East, and whereas the pressure is exercised on the West, expansion must take place in the South-East or the South, and therefore at the expense of Bulgaria or Greece. According to the said statistical table Greece is less thickly populated than Bulgaria, so that Greece would come under consideration for a diminishing of territory before Bulgaria.

A regulating of the differences of the density of population by extension of territory in France, Germany, Italy, Austria-Hungary and Rumania, has therefore, as a necessary consequence, successive shiftings of frontiers from West to East, and in the Balkans, in a Southerly direction.

But the populations will also have to move along in the same directions. The Western part of Germany that must become French, must, as far as possible, be evacuated by the Germans; otherwise that part cannot diminish the French density. The Western part of Russia, destined to become German, must, as far as possible, be left by the Russians, if Germany's density is to be reduced. The same applies to that part of Austria bordering on Italy, where the Italians will have to replace the Austrians; to the part of Rumania bordering on Hungary, where the Hungarians will have to take the place of the Rumanians; for Bessarabia where the Rumanians will succeed the Russians; and finally to the Greeks, who to a certain extent will have to make room for the Servians.

And these State expansions from West to East and in the Balkans from North to South coincide with the main lines of history.

About fourteen centuries ago, the human tidal-wave broke loose in Asia and spread over Europe. After having reached its highest point in Western Europe, about eleven centuries later, the human stream made its way over the Ocean to America and is there at present still engaged in extending itself from the Atlantic to the Pacific Ocean, from East to West. And, at least as regards

North America, it will be a considerable time before the population density of the West coast exceeds that of the East (1). While the human tide has not yet reached its Western height in America, it has already long been on the ebb in Europe. Since the 16th century, when the increase in the population of Europe first began, France and Germany (2) have steadily expanded territorially from West to East, Russia (3), by extending its territory in Siberia, followed their example, and later, Austria (4) and Italy have not remained idle in the political pressure from West to East.

And before the European human tide spread from Western Europe to America, there arose still another human stream from Asia Minor, which, under the sign of the Crescent, conducted a national migration from the South-East to the North in the Balkan Peninsula. Crushing, expelling or Moslemizing Greeks, Servians, Bulgarians and Bosnians, the tidal wave of Islam was finally, for the second time, brought to a stand-still before the gates of Vienna. But that migration also was not permanent. In the 19th century the ebb also set in in the Balkans. Greeks, Servians and Bulgarians have resumed their places in the ranks of the nations, and the Empire of Mohammed in the Balkans, has been driven back from the North to the South as far as the gates of Adrianople.

This is a brief sketch of a new principle of International Law, introducing itself under the title of: Equality of density of population.

(1) From 1790—1890 the centre of gravity of the population in North America has moved 10 degrees from East to West, viz, from Baltimore to Indianapolis (See Dr. G. WEGEMANN: "Der Bevölkerungsschwerpunkt des Deutschen Reiches" in: PETERMANN'S Mitteilungen 1903, pages 210/211). See also chart 2 of RICHARD BLUM'S "Die Entwicklung der Vereinigten Staaten von Nordamerika" in: PETERMANN'S Mitteilungen 1903, Ergänzungsheft n°. 142, on which chart, the place of the centre of gravity of the population from 1790 to 1900 is shown for every ten years, and from which it appears that during that time the centre of gravity is pushed almost in a straight line from East to West.

(2) RATZEL, *Pol. Geographie*, pages 123, 591, 821.

(3) Idem, *Anthropo-Geographie I*, pages 457/458, 460.

(4) Idem, *Pol. Geographie*, pages 247/248, 822.

III

Relation to other principles of International Law

Originating in the idea of preventing among the States disputes which affect their essential vital interests, the new principle aims at securing their sovereignty. Thus far from attacking the said sovereignty, it protects same and is supported by it. The new principle therefore is not imposed or forced upon the States. Appreciating the retaining of their sovereignty, they will, from self-interest, and thus of their own free will, accept and apply it. The principle of sovereignty consequently remains unhindered.

If the new principle is to attain its object, then it will have to be applied at fixed intervals of time, e. g., every 50 years. These periodical revisions of the frontiers of the States will cause a certain instability, which will not however prevent its exerting a wholesome influence on the future. The frontiers being, up to now, regarded as the bulwark of a State's existence and therefore those frontiers strengthened as much as possible, in the fatal conviction that the stronger the frontiers were, the more the sovereignty of the State was secured (1), in consequence of the periodical moving of the land-marks, such fatal conviction will give way to the more correct conception, that a State's sovereignty cannot be better secured than by assuring to each State the territory, that, with a view to the number of inhabitants and to the habitableness of its territory, is justly due to it. So, reciprocally, the application of the

(1) RATZEL (*Pol. Geographie*, page 589) wrote in the year 1903: "Je höher ein Staat seine Selbständigkeit hält, desto grösseren Wert wird er auf seine Grenze legen, in der Festigkeit der Grenze liegt die Dauer des Staates".

new principle tends more and more to a just appreciation of its correctness, and the correctness of the principle will ensure its permanent application. So the new principle itself, and its application, will mutually support each other, and permanently tend to the benefit and welfare of mankind. Moreover, inasmuch as aviation has led traffic into higher, submarine navigation into lower, and wireless telegraphy into etherial channels, the importance of a State frontier, as an enclosing fence, has declined, and the utility of fortifying same has become illusory. In future the frontiers will continue to define the territory, but for the protection thereof, however strongly fortified, they will be no longer fitted (1). Consequently there is no room for the already antiquated doctrine of natural frontiers (2) side by side with the new principle.

The new principle is not in conflict with the principle of nationality. In the national wars of Italy and Germany the principle of nationality performed wonders. Not as watch-word alone but as an inspiring factor of their existence, the principle of nationality, as well for Italy as for Germany, ignited and stimulated the fire in which their unity was welded.

(1) In a lecture on "Types of political frontiers in Europe", given at the Royal Geographical Society on December 7th., 1914, Prof. L. W. LYDE declared, inter alia, that: "The essential object of statesmanship in the delimitation of a frontier, therefore, ought to be to effect an equilibrium along it, so that peoples could meet peacefully, and so that ascendancy should not be able to intrude across even by fair means, still less by foul means; and no doubt the difficulty of effecting this must vary with the remoteness of the frontier from its own political core, with the character and density of any population along it" etc. And in his reply: "we are not looking for defensible lines, but lines along which men would meet naturally and peaceably". (*The Geographical Journal*, February, 1915, pages 127, 128 and 143). And FREDERIC HARRISON, D. C. L. in *The Fortnightly Review*, August, 1918, page 166: "No one can foretell the possible developments of aircraft and submarine craft. For merely commercial use, where neither size nor speed nor defence is in question, there seems to be no definite limit to their power. In that case frontiers will be geographical but not material boundaries". In a contrary sense: Col. Sir THOMAS H. HOLDICH: *Political frontiers and boundary making* (1916).

(2) H. BONFILS, *Manuel de droit international public* (1914), page 319.

The new principle does not come in conflict therewith, but begins where the former ends. The principle of nationality unites all who speak the same language, inhabit the same country, have the same history, in short all who have the same ethnographical characteristics, into one nation, into one State (1). The new principle gives the nations the territory, which, considering the number of their inhabitants, is their reasonable due. The new principle therefore completes what the principle of nationality has begun: viz., the State as an organic connection between the nation and its territory.

Neither on the doctrine of the balance of power does the new principle make any encroachment. On the contrary, both are of similar origin. Both owe their existence to the desire to secure the State sovereignty and both make use of the same means thereto: the promotion of equilibrium. The balance of power weighs one State against another, the principle of equality of population density causes equilibrium in a State between nation and territory. The doctrine of the balance of power aims at the external state of equilibrium between States, the new principle the internal equilibrium between its two essential parts: the nation and its territory. By furthering the internal equilibrium of a State, the new principle, moreover, diminishes the danger, that the balance between the States mutually, shall be disturbed.

(1) Famous is MANCINI's oration: "Della nazionalità come fondamento del Diritto delle genti", at the commencement of the Course in International and Sea Law at Turin, on January 22nd, 1851. With five other discourses by the great Italian, it has formed, thanks to his son-in-law, AUGUSTO PIERANTONI, since 1873, the 14th volume of the *Biblioteca delle scienze giuridiche e sociali*. It had been previously published by the heirs of BOTTA of Turin (1851).

IV

The emigration difficulty

There are certainly difficulties attached to the application of the new principle; the national migrations connected therewith, without which the principle could not develop itself, furnish one great difficulty. It is certainly a great hardship to have to leave the place where one has lived for years and where one has his belongings, in short, the place which is his home.

In considering this difficulty however, it must be premised that it is not a matter of choice, whether or no State frontiers shall be maintained permanently unchanged. The State is a living organism; it rises, grows, declines and falls, and in the course of its existence repeatedly shifts its frontiers. The history of the world teaches us, that during the course of the centuries of its existence, no State has maintained its frontiers. The expansions and the diminutions of States over the earth's surface, shown, as by the kinema, on the endless film of time, afford us a spectacle such as the most capriciously changing kaleidoscope.

The frontiers of States are constantly liable to alteration. All State frontiers are only temporary, absolute State frontiers cannot exist (1). But the alterations of frontiers, have, up to now, usually been carried out by force, while the new principle will attain such in a peaceful manner.

The difficulty of compulsory emigration does not therefore concern the question as to whether it is really necessary to periodically alter the State frontiers, but as to what shall happen, after such periodical alterations of frontiers, to the inhabitants of the country annexed to a foreign State, in consequence thereof.

(1) RATZEL, *Pol. Geographie*, page. 542.

The fate of the inhabitants of conquered territory has been always decided by the supposed interests of the conqueror; even when in consequence thereof the inhabitants were exterminated, expelled or exiled. This was one of the methods of the children of Israel when taking possession of the promised land over the Jordan. So we read in the Book of Joshua (1):

"And at that time came Joshua, and cut off the Anakims from the mountains, from Hebron, from Debir, from Anab and from all the mountains of Judah, and from all the mountains of Israel: Joshua destroyed them utterly with their cities.

"There was none of the Anakims left in the land of the children of Israel: only in Gaza, in Gath, and in Ashdod, there remained.

"So Joshua took the whole land, according to all that the Lord said unto Moses, and Joshua gave it for an inheritance unto Israel, according to their divisions by their tribes. And the land rested from war."

When however Israel had become powerful, so that the conquered people need no longer be feared, they were made tributary and no longer driven forth, at least not entirely (2). Sometimes too Israel left the conquered people undisturbed (3).

When the conqueror thought it was to his interest to utilize the inhabitants of the conquered country as his tools, he reduced them to slavery. So in the olden times there were to be found in Sparta the Helots, mostly descendants of the earlier Achæan inhabitants, as serfs of the State. They cultivated the land and served the Spartans. The Perioeci (those who dwell around), also mainly descendants of the ancient Achæans, occupied the country, were personally free but paid tribute (4).

The Republics of Greece never granted to the vanquished the

(1) Chapter 11, verses 21—23.

(2) Joshua, Chapter 17, verse 13. Judges, Chapter 1, verses 28, 30, 33 and 35.

(3) Judges, Chapter 1, verses 21, 27, 29, 31, 32 and 33.

(4) Dr. J. A. WYNNE, *Geschiedenis der oudheid. De Oostersche volken en Griekenland* (History of Antiquity. The Eastern peoples and Greece) page 216.

rights of citizenship. Proud of their nationality, they dreaded the pollution of foreign intermingling and therefore considered it to their interest to continue treating the vanquished as foreigners (1).

The Romans regarded their interests quite differently. Romulus set the example, as TACITUS (2) states, by at once elevating his vanquished enemies to the status of Roman citizens. With this example in view, as we read in SALLUSTIUS (3), the Roman people, being convinced that it is safer to rule people who are willing to be so ruled, than those who are compelled thereto, regularly adopted as a precept the principle that it is better to make friends than slaves. When the Romans subdued a people, they deprived them, at least in part, of their land and partly converted it into State-domains (*ager publicus*), sold a part, while another part was assigned for habitation to Roman citizens, often plebeians, who, in consideration therefor, took upon themselves the obligation of protecting the land for the State, and if necessary of defending same by force of arms. These regions were termed: *coloniae*. But the vanquished inhabitants were not exterminated, not expelled, not enslaved, nor was tribute levied upon them; Rome let them alone. They lived peacefully with the Roman colonists, intermarried with them, so that both races amalgamated, and eventually all the inhabitants of the conquered country were Roman citizens (4). Thus the descendants of the vanquished obtained, as a matter of course, Roman citizenship, which Rome for a long time persisted in refusing to her allies, and only at last, when driven by need, reluctantly granted to them (*lex Julia* 90 B. C.; *lex Plautia Papiria* 89 B. C.). But the conquered nations of the colonies were assimilated with the Romans, while the allies were independent and consequently dangerous. And when, many years later, in 212 A. D. Emperor CARACALLA by the *Constitutio Antoniniana*

(1) R. SELOSSE. *Traité de l'annexion au territoire français et de son démembrement* (1880), page 107.

(2) GROTIUS, *Op. cit.* Liber III, Caput XV § III.

(3) *Ibidem* § XII.

(4) WYNNE, *Algemeene geschiedenis* (General History), vol. I (9th edition) pages 179 and 218.

granted citizenship to all free inhabitants of the Empire, and thus also to the inhabitants of conquered territory, neither did he do this out of kindness towards them, but from self-interest, viz. with the aim of levying those taxes upon them which Roman citizens had to pay (1).

Under CLOVIS (481—511) — the founder of the Franconian Empire — and his successors, the Merovingians, the conquered Nations were usually only made tributary, as e. g., the Thuringians (491) and the Burgundians (534). CLOVIS, however, deprived the West Goths in Aquitaine, of their country and their private possessions (2).

CHARLEMAGNE and his successors, with few exceptions, generally annexed their conquered enemies with their territory (3). Already under CHARLEMAGNE however serious objections had arisen against such methods, on the annexation of the territory of the Saxons.

On account of their marauding expeditions, which they carried on in the Franconian Empire, CHARLEMAGNE was compelled to combat them. He vanquished them and occupied their country; but hardly had he departed when the Saxons rose and invaded Hesse. In 775 he drove them back over the Elbe; after his departure however, the Saxons again rose but for the third time he brought them into subjection. At the Imperial Diet at Paderborn (777) the Saxons swore allegiance to CHARLEMAGNE and promised conversion to Christianity and to pay tribute. WIDUKIND, the principal Saxon chief, however, who had not appeared at the Imperial Diet, led his liberty-loving countrymen for the fourth time to battle, but again in vain. CHARLEMAGNE defeated them in 779 near Bozholtz. In the year 782 CHARLEMAGNE enacted the great "Capitulare de partibus Saxoniae", the constitution for Saxony, and raised an army to repel an invasion of the Sorbs. But these measures caused such a general exasperation, that the Saxons, in spite of their oft repeated promises of submission, fell upon a

(1) Ibidem, page 266.

(2) R. SELOSSE, op. cit. page 116 etc.

(3) Ibidem, page 119 etc.

Franconian army and defeated it. The punishment was dreadful; on one day CHARLEMAGNE had four thousand five hundred leading Saxons beheaded. But this by no means restored peace; the whole nation rose and it took CHARLEMAGNE three years to bring them again into subjection. When about ten years later the Saxons again became restless, the great organizer, realizing that it was impossible to assimilate them and that conflict would only breed conflict anew, did something different, something quite new. He finally took a measure in regard to the conquered Saxons, which, if carried out earlier, would have prevented their resistance, and which, in any case, now made an end of it. He moved part of the inhabitants to other provinces of his Empire and replaced them by Franks. He compelled thousands of Saxons to emigrate (795). Before proceeding to Rome, where Pope LEO III was to place upon his head the golden Imperial crown (800), he once more regulated the depopulation of the Saxon country, after which again entire Saxon tribes were transferred to Franconian regions. And, in the year 804, when making his last progress through Saxony, he dispersed all the Saxons, living on the right bank of the Elbe, over other parts of his Empire and occupied that bank with Abotrites (1).

After CHARLEMAGNE also, the rule still held good, that all inhabitants of annexed territory, as a matter of course, became subjects of the conqueror. First under LOUIS XIV (really under LOUIS XIII) this system began to change. In the treaties made, one finds the first traces of the right of the inhabitants of conquered territory, if such was their wish, to be excluded from the annexing State: the right of option (2). So we read in the treaty of Arras (August 9th., 1640):

"Les bourgeois et habitants desdites villes, présents et absents, pourront continuer leur demeure en ladite ville ou en tel lieu

(1) WYNNE, *Algemeene geschiedenis* (General History), vol. II (7th edition), pages 46—48. Dr. H. BRUGMANS, *De middeleeuwen* (The Middle Ages), pages 117, 118, 121, 124 and 132.

(2) The word "option" first appears in the Franco-Spanish frontier treaty of Elisson dd. August 27th., 1785 (MARTENS t. IV, page 26, art. VII).

de l'obéissance du roi durant le temps de deux ans prochains, sans pouvoir être inquiétés en leur personne pour quelque cause que ce soit, pourvu que pendant lesdits deux ans, ils prêtent le serment de fidélité, après lequel laps de temps ou le cours d'icelle ils pourront se retirer où bon leur semblera. Audit cas leur sera permise la propriété et jouissance de tous leurs biens pour en disposer, les transporter, donner, vendre, aliéner, changer et engager, comme ils trouveront à propos, ou bien les faire recevoir et administrer par tels qu'ils voudront ordonner, et venant à mourir hors ou dedans ladite ville sans avoir fait testament ou autre disposition, leurs biens suivront ceux qu'ils font leurs héritiers ou leurs plus proches parents respectivement."

One finds the same stipulation in the treaties of Ypres (Sept^r 25th., 1659), Doornik (June 24th., 1667), Douai (July 6th., 1667), and Ghent (March 9th., 1678), analogous stipulations in the treaties of Utrecht (March 31st., 1713) and Rastadt (March 6th., 1714) (1).

It appears to be incorrect, to see in this right of option a development of the *beneficium emigrandi*, which was granted during the Reformation in Germany by CHARLES V on November 19th., 1530 and on September 25th., 1555 in the interest of the liberty of the confession of faith (2). The two ideas are indeed far apart. The *beneficium emigrandi* is connected with the political teaching of those days, according to which, subjects had not the right to leave the country, and it was an essential right of the sovereign to keep his subjects within the frontiers of his country (3). So, for instance, taught JEAN BODIN in the year 1580 in his work on the Republic:

"Mais quoy que die Ciceron qu'il ne fust point defendu de quitter la subiection des Rommains, & aller autre part, cela ne fait pas qu'il ne soit en la puissance de tous seigneurs souuerains retenir leur subiects, & les empecher de sortir de leur obeissance.

(1) SELOSSE, *op. cit.* page 134 etc.

(2) ERNEST NYS, *Le droit international*, t. II (1912) page 24. Dr. F. STOERK, *Option und Plebiscit bei Eroberungen und Gebietscessionen* (1879) page 94 etc.

(3) STOERK, *op. cit.* page 24.

Aussi voyons-nous en tous les traittés de paix ou d'alliance, ceste clause ordinaire, que les Princes ne receurent les subiects & vassaux les uns des autres en leur protection, bourgeoisie, ou priuileges sans leur consentement expres." (1): etc.

At the Imperial Diet of Augsburg on November 19th., 1530, CHARLES V gave those, who, notwithstanding the Reformation had remained Catholics, the right to leave, unmolested, the country they inhabited. He decreed:

"Und nachdem Wir in Unserm Käyserlichen Gemüth in keinen Zweiffel setzen, es seyen noch *viel standhafftiger Christen, dem alten wahren Christlichen Glauben anhängig*, und denen die auffrührige, verführige und hievor verdamnte Lehre höchlich zuwider, damit nun dieselbe in solchem ihrem ehrbarn standhafftigen Gemüth, wie billich, gehalten, und durch einige Beträngniss der andern davon nicht gewendt werden, so wollen Wir, auch Churfürsten, Fürsten und Stände, dass dieselbe, so in den Oberkeiten, Städten, Orten und Flecken gesessen, die diesen Unsern Abschied nicht angenommen (so fern sie auff ihrer Christlichen Meinung verharren und bestehen, und sich dieses Unsers Abschieds halten und dem geleben) *mit Ihren Haaben, Weib und Kindern, in Unser und des Heil. Reichs sondern Schutz und Verthädigungen* seyn, und sich derselben freuen und gebrauchen sollen, wie andere Unser und des Heiligen Reichs Schutz-Verwandten. Darzu wollen Wir, aus Käyserl. Macht, denselben Bürgern, Bürgerin und Einwohnern, so noch des alten Christlichen Glaubens sind, und dar auff verharren, ihrer Gelegenheit nach, mit ihrem Leib, Haab und Gütern, einen *freyen Ab- und Zuzug*, der obgemeldten Oberkeiten, Städt, Ort und Flecken, ohne Beschwerde einiger *Nachsteuer oder Abzug ihrer Güter*, und unverhindert männiglichs *zugelassen und bewilliget haben*: Und thun das hiemit wissentlich. Wollen auch, dass ihnen solches an ihren Bürgerlichen gethanen Pflichten, Stadt- oder Bürger-Recht, keinen Nachtheil oder Verletzung bringen noch gebähren soll, in einige Weiss oder Weg. Und ob einige obangezeigte Oberkeit, Stadt oder Flecken, Freyheiten oder

(1) J. BODIN, *Les six livres de la Republique* I, Caput 6 (ed. 1580, page 88).

Privilegien, diesem zuwider oder entgegen hätten, denselben wollen Wir derogirt, und solches alles in diesem Fall hiemit aufhebt haben." (1).

And as regards the Augsburg religious peace of September 25th., 1555, this proceeded from the principle: *cujus est regio, illius est religio*, but in order to mitigate the consequences thereof, both to the followers of the old belief and the adherents of the Augsburg confession, who, for religious reasons wished to leave the country, permission was granted to do so. The clause relating thereto reads:

"Wo aber unsere, auch der Churfürsten, Fürsten und Ständen Unterthanen, der alten Religion oder Augspurgischen Confession anhängig, von solcher ihrer Religion wegen, aus unsern, auch der Churfürsten, Fürsten und Ständen des Heil. Reichs Landen, Fürstenthumen, Städten oder Flecken, mit ihren Weib und Kindern, an andere Ort ziehen, und sich nieder thun wolten, denen soll solcher Ab- und Zuzug, auch Verkaufung ihrer Haab und Güter, gegen ziemlichen billigen Abtrag der Leibeigenschafft und Nachsteuer, wie es iedes Orts van Alters anhero üblich hergebracht und gehalten worden ist, unverhindert männigliches, zugelassen und bewilligt, auch an ihren Ehren und Pflichten allerdings unentgolten seyn. Doch soll den Obrigkeiten an ihren Gerechtigkeiten und Herkommen der Leibeigenen halben, dieselbigen ledig zu zehlen oder nicht, hierdurch nichts abgebrochen oder benommen seyn." (2).

The *beneficium emigrandi* was therefore granted, not by the conqueror but by their own ruling Prince, to those who, for religious reasons, wished to leave the country, while the right of option was granted by the conqueror to the inhabitants of the conquered country. The *beneficium emigrandi* comes therefore

(1) Abschied des Reichs-Tags zu Augspurg Anno 1530 aufgericht, § 60 (Neue und vollständigere Sammlung der Reichs-Abschiede. Frankfurt 1747, so-called Koch'sche Sammlung, Volume II, pages 314/315).

(2) Reichs-Abschied zu Augspurg aufgericht A. 1555, worinn der Religions-Friede und die Executions-Ordnung begriffen, § 24 (*Corpus juris publici* J. J. SCHMAUSS, 1735, page 225).

within the sphere of Public Law and the right of option within that of International Law. The *beneficium emigrandi* was granted on behalf of liberty of belief, the right of option in the supposed interest of the conqueror. It has been maintained that this was not the case, and that the right of option was granted in the interests of the inhabitants of conquered territory (1). But this also appears to be inexact. The fate of the inhabitants of conquered territory naturally remained dependent on the supposed interest of the conqueror, but the views of the latter regarding his interest began to change somewhat. He began to realize that it could not be to the interest of his State, to make subjects of those inhabitants of territory conquered by him, who, fiercely disapproving of his rule, would constitute a constant danger for him. To meet the views of those who preferred the old State connection to the new, he gave such inhabitants the right to leave the conquered territory and to withdraw within the new frontiers of their native country. Although this measure fell in with the wishes of those who fiercely repudiated the rule of the conqueror, this does not authorize the conclusion that the said measure was taken in their behalf (2).

Meanwhile it continued to be the rule, that the inhabitants of conquered territory were annexed with the territory. POTHIER (1699—1772) had no doubt on this point:

“Il est certain”, he wrote, “que, lorsqu’une province est réunie à la couronne, ses habitans doivent être regardés comme françois naturels, soit qu’ils y soient nés avant ou après la réunion. Il y a même lieu de penser que les étrangers qui seroient établis dans ces provinces, et y auroient obtenu, suivant les lois qui y sont établies, les droits de citoyen, devroient après la réunion être considérés comme citoyens, ainsi que les habitans originaires de ces provinces, ou du moins comme des étrangers naturalisés en France.

“Lorsqu’au contraire une province est démembrée de la couronne, lorsqu’un pays conquis est rendu par le traité de paix, les

(1) SELOSSE, *op. cit.* page 319 etc.

(2) See A. MÉRIGNHAC, *Traité de droit public international* (1907) II, page 494.

habitans changent de domination. De citoyens qu'ils étoient devenus au moment de la conquête ou depuis la conquête, s'ils sont nés avant la réunion, de citoyens qu'ils étoient par leur naissance jusqu'au temps du démembrement de la province, ils deviennent étrangers" (1).

How entirely dependent the right of option is upon the supposed interest of the conqueror, was made evident under the first NAPOLEON. To admit the right of the inhabitants to leave the conquered country, meant to him the loss of soldiers. Hence, of all the annexation treaties made by NAPOLEON, only one mentions the right of option, viz., the treaty of Vienna, dated October 14th., 1809, made between NAPOLEON and the Emperor of Austria. And that such was the case with that treaty may be ascribed to the fact that territory was mutually ceded. There even exist Imperial decrees, by which the inhabitants of annexed territory are expressly forbidden to escape by emigration from French nationality (2).

The Congress of Vienna (October 30th., 1814 to June 10th., 1815), held after the fall of NAPOLEON in accordance with Art. 32 of the treaty of Paris, dated May 30th., 1814, went to work in a most extraordinary manner in deciding the fate of the inhabitants of the territory captured from NAPOLEON and his allies.

By the treaty of Paris of May 30th., 1814, France was forced back, approximately, to within its old frontiers of January 1st., 1792 (3) and the territory thereby released had to be divided between the victorious allies. For this purpose, it was necessary, in the first place, to know exactly what there was to be divided. The partition and division of NAPOLEON's inheritance had to be preceded by an inventory. Therefore on the proposal of VON METTERNICH it was decided, at the sitting of December 24th., 1814,

(1) *Traité des personnes et des choses* (Partie I, titre II, section première) (*Œuvres complètes* (1844) t. 13, page 391).

(2) SELOSSE, *Op. cit.* page 157.

(3) By the treaty of Paris of November 20th., 1815 within its frontiers of 1790.

that a *Commission de statistique* should be instituted (1). That commission was charged to accurately define the territory which had been captured from NAPOLEON and his allies in the late war, with this proviso however, that the estimate had to be made, not according to the area of the country, but according to the population, judging not alone the number but also the kind or the quality (2). The territory, estimated on this basis by the *Commission de statistique*, with the population living thereon, was accordingly divided among the Powers, sometimes according to the principle of legitimacy, introduced by TALLEYRAND, in connection with the principle of the European balance of power (3), generally arbitrarily. The estimating of the population, not only according to numbers, but also to the kind or the quality, had as a consequence that the subjects of "mediatised" States (4) were placed lower than ordinary subjects;

(1) "Statistique" conveyed quite a different meaning at that time to what it does at present. The author of the "*Histoire du Congrès de Vienne*", in 3 volumes, of the year 1829 terms la statistique: "la science de la force matérielle des états" (vol. I, page 176). According to Dr. C. A. VERRIJN STUART, *Inleiding tot de beoefening der Statistiek* (Introduction to the study of Statistics), vol. I (1910), page 8, it is "the method of investigation which by observation of phenomena in the mass, both individually and in mutual relationship, endeavours to show regularity in their diversity and consequently unity, and thereby to attain to their "type", more briefly: "the methodical book-keeping of life's phenomena capable of being observed en masse".

(2) D'ANGEORG, *Le Congrès de Vienne et les traités de 1815*, vol. I, page 561—562.

(3) E. DURIEZ, *Les principes de l'annexion dans les traités de 1815* (1905), pages 124 etc., 143, 144, 163 and 169.

(4) The "mediatising" of States was a consequence of the peace of Lunéville dated February 9th, 1801, by which the left bank of the Rhine came to France. For the losses arising therefrom, various German princes, e. g., those of Prussia, Bavaria, both Hesses and Nassau, were indemnified, inter alia, by "mediation". Up till then many small principalities and earldoms were equally immediate Imperial estates as Bavaria and other great German States, which, while they were really independent, only recognized the Emperor as their liege-lord. Now, the States, which were "mediatised", ceased thereby to be any longer immediate Imperial estates. They lost their sovereign rights and were subjected to the rule of those German princes, who on account of the loss of the left bank of the Rhine, had to be indemnified. Their relation to Emperor and Empire, consequently became indirect instead of immediate, as had been the case.

sometimes they represented the half, sometimes the third of the value of an ordinary subject (1). Such estimating of the populations therefore, was carried out as if they had been cattle of three different grades! And in the Vienna Final Act dated June 9th., 1815, it therefore happened that the Powers promised one another the cession, not of geographically defined pieces of territory, but of districts, containing a certain number of inhabitants. As for instance:

Art. XXXIII. "Sa Majesté Britannique, roi de Hanovre, afin de concourir au vœu de Sa Majesté Prussienne, de procurer un arrondissement de territoire convenable à S. A. S. le duc d'Oldenbourg, promet de lui céder un district renfermant une population de cinq mille habitants" (2).

Art. XXXVII. "S. M. le roi de Prusse cédera de la masse de ses Etats, tels qu'ils ont été fixés et reconnus par le présent Traité, à S. A. R. le grand-duc de Saxe Weimar, des districts d'une population de cinquante mille habitants, ou contigus ou voisins de la principauté de Weimar.

Sa Majesté Prussienne s'engage également à céder à Son Altesse Royale, dans la partie de la principauté de Fulde qui lui a été remise en vertu des mêmes stipulations, des districts d'une population de vingt-sept mille habitants.

S. A. R. le grand-duc de Weimar possédera les districts susdits en toute souveraineté et propriété, et les réunira à perpétuité à ses Etats actuels" (3).

Art. XLIX. "Il est réservé, dans le ci-devant département de la Sarre, sur les frontières des Etats de S. M. le roi de Prusse, un district comprenant une population de soixante-neuf mille âmes, dont il sera disposé de la manière suivante: le duc de Saxe-Cobourg et le duc d'Oldenbourg obtiendront chacun un territoire comprenant vingt mille habitants; le duc de Mecklenbourg-Strelitz et le Landgrave de Hesse-Hombourg, chacun un territoire comprenant

(1) D'ANGEORG, Op. cit. pages 1015, 1022, 1023. DURIEZ, Op. cit. pages 187/188.

(2) Ibidem, page 1404.

(3) Ibidem, page 1405.

dix mille habitants; et le comte de Pappenheim, un territoire comprenant neuf mille habitants." etc. (1).

This political slave-dealing, by which the rights of nationality received not the slightest consideration, has rightly been condemned (2).

By art. XI of the treaty of Paris dated November 20th., 1815, the final Act of the Congress of Vienna was confirmed, but by art. VII of that treaty, was granted, in all countries which should change its ruler, to the inhabitants, both the native population and foreigners, of whatever condition or nation, a period of six years to dispose of their property and to withdraw to the country of their choice (3). By granting such permission also specifically to the foreigners, was proof, that on the annexation of the country, they also were considered to be annexed therewith (4).

Since that time, the granting of the right of option, to those whose nationality would be changed in consequence of annexation, has become general on the concluding of annexation treaties. In those, however, whose nationality would be changed in consequence of annexation, one does not count the foreigners, but only the subjects of the State, part of whose territory was to be annexed (5). At present therefore the doctrine holds good, that in case of

(1) Ibidem, pages 1409/1410. See also articles XXVII, 4°, XXXIX and XLVII.

(2) DURIEZ, Op. cit. pages 187/188.

(3) D'ANGEORG, Op. cit page 1600. The treaty of Paris dated May 30th, 1814, contained, in art. XVII (D'ANGEORG, page 167) an almost similar stipulation. Also art. VI of the treaty of Vienna, dd. May 3rd., (April 21 st.) 1815 between Austria and Russia (D'ANGEORG, page 1148) and art. IV of the treaty of Vienna of the same date, between Prussia and Russia (D'ANGEORG, page 1156) both "pour le règlement des affaires de Pologne" gave the right of option during six years. Art. XX of the final Act (D'ANGEORG, pages 1395, 1396), the art. XIII of the treaty of Vienna dated May 18th., 1815 between Prussia and Saxony (D'ANGEORG, pages 1196, 1197) granted the right of option reciprocally, without specification of time and "sauf l'obligation du service militaire".

(4) Different opinion: F. DESPAGNET, Cours de droit international public, 4th. edition, page 463.

(5) BONFILS, Op. cit. page 280.

annexation of territory the national inhabitants (1) of the country become annexed with the proviso of the right of option.

Does this doctrine really fulfil the reasonable demands of fairness regarding the inhabitants of conquered territory?

As already mentioned, the granting of the right of option, was not due to consideration for the said inhabitants, but was in the interests of the conqueror. This fact already proves that this right provides no guarantee that the interests of such inhabitants shall receive proper consideration. The so-called right is in reality nothing more than a favour (2).

Moreover the granting of the right of option to the inhabitants of the annexed territory only remedies the evils thereof in part, only in so far as the right to leave the annexed country is made use of. Many inhabitants of the annexed country are in reality not free, as regards the choice: whether to let themselves be annexed or to withdraw within the new frontiers of their native land. Many of them will, for various reasons, prefer to remain where they are, and by so doing, however much they may regret it later, will henceforth belong to a State system which is foreign to them. Practically, therefore, in case of annexation of territory, notwithstanding the right of option, part of the population is annexed together with the territory. And for that part of the population the grievance against annexation of population retains its full force.

And such grievance is at present greater than ever. Formerly the annexed people changed their sovereign in consequence of annexation, but they retained, if not in principle yet in reality, their own particular civil legislation. Since the French revolution however it is different. The unity of legislation in the State became a necessary condition for good government and thus the annexing of a conquered population now brings same under all the branches

(1) The treaties thereby distinguish between the national inhabitants born in the annexed country and those who have only their domicile there (BONFILS, *ibidem*).

(2) SELOSSE (Op. cit. page 298) says of the right of option, *inter alia*: "si on le trouve mentionné dans la plupart des traités modernes, il y est ordinairement soumis à tant de conditions de la part de vainqueur qu'il n'est plus une garantie pour les individus".

of the legislation of the annexing State (1). In conflict with the principle of nationality, according to which, the laws of the State may only be imposed upon its own subjects, for whom such laws are specially made (2), the annexing State now obliges its neighbour's subjects to submit to *its* law in every respect, and thereby inflicts the greatest possible injustice conceivable on them. BARTOLUS

(1) SELOSSE, *Op. cit.* page 114 and 149. Already in 1814 BENJAMIN DE CONSTANT-REBECQUE wrote (*De l'esprit de conquête et de l'usurpation, dans leurs rapports avec la civilisation européenne*, page 46 sqq.): "La conquête, chez les anciens, détruisoit souvent les nations entières; mais quand elle ne les détruisoit pas, elle laissoit intacts tous les objets de l'attachement le plus vif des hommes, leurs mœurs, leurs loix, leurs usages, leurs Dieux. Il n'en est pas de même dans les tems modernes. La vanité de la civilisation est plus tourmentante que l'orgueil de la barbarie. Celui-ci voit en masse: la première examine avec inquiétude et en détail. Les conquérans de l'antiquité, satisfaits d'une obéissance générale, ne s'informoient pas de la vie domestique de leurs esclaves ni de leurs relations locales. Les peuples soumis retrouvoient presque en entier, au fond de leurs provinces lointaines, ce qui constitue le charme de la vie, les habitudes de l'enfance, les pratiques consacrées, cet entourage de souvenirs, qui, malgré l'assujettissement politique, conserve à un pays l'air d'une patrie. Les conquérans de nos jours, peuples ou princes, veulent que leur empire ne présente qu'une surface unie, sur laquelle l'œil superbe du pouvoir se promène, sans rencontrer aucune inégalité qui le blesse, ou borne sa vue. Le même code, les mêmes mesures, les mêmes réglemens, et, si l'on peut y parvenir, graduellement la même langue, voilà ce qu'on proclame la perfection de toute organisation sociale. La religion fait exception; peut être est-ce parcequ'on la méprise, la regardant comme une erreur usée, qu'il faut laisser mourir en paix. Mais cette exception est la seule, et l'on s'en dédommage, en séparant, le plus qu'on le peut, la religion des intérêts de la terre. Sur tout le reste, le grand mot aujourd'hui, c'est l'uniformité. C'est dommage qu'on ne puisse abattre toutes les villes, pour les rebâtir toutes sur le même plan, niveler toutes les montagnes, pour que le terrain soit partout égal: et je m'étonne qu'on n'ait pas ordonné à tous les habitans de porter le même costume, afin que le maître ne rencontrât plus de bigarrure irrégulière et de choquante variété. Il en résulte, que les vaincus, après les calamités qu'ils ont supportées dans leurs défaites, ont à subir un nouveau genre de malheurs. Ils ont d'abord été victimes d'une chimère de gloire: ils sont victimes ensuite d'une chimère d'uniformité".

(2) PASQUALE FIORE. *Diritto internazionale privato*. Seconda edizione, page 38: "Le leggi di uno Stato non si possono applicare che ai sudditi pei quali principalmente sono fatte". ANDRÉ WEISS. *Traité théorique et pratique de droit international privé*, 2nd. edition, III, page 67 etc.

(1314—1357) has already remarked that people are not everywhere the same, and founded thereupon his doctrine, that one may only impose the law upon one's own subjects (1). The same was taught by MONTESQUIEU (1689—1755), who so stringently adjudicated the laws to the people for whom they had been made, that it would be a great coincidence if the laws of one people were fitted for another (2). A Frenchman is certainly not a German, nor is an Austrian an Italian; therefore the laws, which regulate their social relations, differ. Difference of race, of origin, of manners and customs and of all other elements which give to each people its peculiar character, necessitate, as a natural consequence, difference of legislation. To give to one people, the laws which are not made for that people, but for another, is in conflict with human nature. To be compelled to obey the laws of one's former enemy, written in a foreign language, would render life one constant vexation.

Much worse however is the obligation of the annexed to serve under the banner of the usurper. To have to serve in the army, whose arms had brought death or maiming to their fathers and brothers, is a daily torture. Beautiful as it is to defend one's native land against the foreign foe, it is quite as detestable to have to march in rank with one's former enemy against one's native land or its ally. And that dark side of the annexation of population together with the country, has also extended in area since the French revolution. Indeed, since France in the year 1793 called all her sons to arms, all armies have gradually grown into national armies, in consequence of which, almost all male subjects, and therefore also almost all the males annexed, are compelled to serve.

In contrast with the humiliating, even man-dishonouring consequences of the annexation of the inhabitants of conquered

(1) "Ubicunque persona non est uniformis, quis non potest disponere nisi circa personam sibi subditam" (Bart. ad primum lib. Cod. tit. De summa Trinitate L. 1. Num. 21/27). About this subject see my "Aanteekening op de leer van het internationaal privaatrecht bij BARTOLUS" (Comment on BARTOLUS' doctrine of the conflict of laws) (1887), page 31 (note), 44 and 45.

(2) De l'esprit des lois, Livre I, chap. III.

territory, the cruelty of the compulsory emigration of part of the population every 50 years, really loses its significance. Moreover one must not forget, that the emigrants withdraw to their own native land, and that their emigration assists in the prevention of the calamities of war. Besides a long term could be granted to the inhabitants of annexed territory for their emigration, and the costs of same could be jointly defrayed by the two States concerned, in equal shares, since such emigration is the natural consequence of a measure of equal importance to both States. The emigrants might be allowed to retain their landed property, situated in the country they are about to leave, so that they need not get rid of it until it seemed desirable to them in their own interests to do so.

But the interests of the inhabitants of the country to be annexed are not the deciding factor in this matter, such being the supposed interests of the conqueror. And the question therefore is, whether the population-annexation, incompatible with the new principle, is really in his interests.

The interest of each State requires that its inhabitants are animated by the same breath of life, which makes them citizens of the same State, that not only the same country, the same origin, the same language, the same manners and customs bind them together in a general community of interests, but also that one spirit, one conscience should unite them into one people and that one ideal should guide them into the future. The inhabitants of a conquered country do not fulfil those requirements in the slightest degree. On the contrary, their country, origin, language, manners and customs are different to those of the conqueror, their national spirit is even inimical to him and the ideal that constantly floats before them is their deliverance from their foreign State bondage. To assimilate such people with its own population has proved impossible to the victorious State (1). One may *place them on an equality* but to *equalize* them is impossible. And without that

(1) Prof. L. W. LYDE (l. c. page 137): "Just as the Prussians have failed, then, to keep a purely German type true to type in Alsace and Lorraine, so they have failed to make Danish and Polish types German in Schleswig and Posen".

assimilation, such a hostile population within the victorious State remains a constant source of danger to it; in many respects a hindrance to the development of its organism (1). Wherever possible such population will prove a stumbling-block for the usurper. Therefore the annexation of the population together with the country is equally in conflict with the interests of the conqueror.

And the conquered State from which part of the subjects shall be taken? For the conquered State the annexed inhabitants and their descendants will be a living reminder of its national humiliation, and it will mourn for its lost children, until it shall have redeemed them from their exile. Many a peace, by which the State frontiers have been changed, has proved to be only a seeming peace. In reality it was frequently the source of a fresh war.

By the application of the new principle, all such drawbacks of population-annexation are entirely non-existent. The new principle is even absolutely incompatible therewith. It excludes annexation of people, whereas it means periodical annexation of territory but with the salutary aim of thereby reducing the density of population in the annexing State and therefore annexation of territory but without the inhabitants. Thus the new principle substitutes for the supposed interest of the conqueror the actual interest both of the too thickly and of the too thinly populated State.

The fact that such peaceful population-migration takes place on so large a scale is no obstacle, seeing that by this means the calamities of war are avoided. Moreover, population-migration on a large scale may also take place on carrying out the right of option. After the annexation of Alsace-Lorraine, the figures in this respect were as follows. The total population of the annexed territory consisted of 1,517,494 inhabitants. Of this total, 538,517 inhabi-

(1) At the meeting of the *Zentralausschuss der fortschrittlichen Volkspartei* held in Berlin on June 9th., 1918, the deputy FISCHECK said, *inter alia*: "Wir wissen, dass die Angliederung, fremder Volksteile der Entwicklung unseres Vaterlandes vielfach ein Hemmnis gewesen ist" (*Berliner Tageblatt und Handelszeitung* dated June 10th., 1918, n°. 291).

tants, thus more than one-third of the whole population, declared their intention of utilizing the right of option, 110.240 option-declarations were declared invalid, so that eventually 428.277 inhabitants, thus more than one-fourth of the whole population, emigrated (1). The argument of CALVO, as to the population-removal in case of partial emigration consequent upon option, applies in still higher degree to the total emigration from the annexed country, viz., that it yields the great advantage "de dégager de toute incertitude la situation des parties intéressées" (2). And finally, the measure is not even new, seeing it was already applied, as we have seen, and with good results, by CHARLEMAGNE.

So much for the emigration difficulty.

Probably there will be still more objections raised against the new principle. It is, however, a question whether they are strong enough to weigh against a principle, which is not only able to prevent disputes between the States, concerning their most essential interests, but also to end the present war in a way satisfactory to the belligerent States.

(1) STOERK, *Op. cit.* page 172.

(2) *Le droit international théorique et pratique* § 2469.

V

First application

For the first application of the new principle, there could be no more favourable moment than the present, now the greatest war which ever waged, keeps apart just those very States, to which, as has been here shown, the new principle should be applied, viz. France, Germany, Italy, Austria-Hungary, Rumania, Servia, Russia and Greece. Reserving the improvements which may be brought about from anthropo-geographical sources in the statistical figures, it may be termed remarkable, that in the present war, just those European States are engaged, whose density figures of the population are higher than the average density figure of Europe, together with their weaker neighbours. Under these circumstances, is the supposition too far-fetched, that if the differences in the density of population had been peaceably regulated before the war, war would not have broken out? On all sides people dispute about the cause of the present war. The belligerent States accuse each other of having begun the war. May it not be possible, that, even if not the *causa proxima*, the *causa remota* of this war, is to be found in the excess of populations and not that certain governments bear the blame, but the pressure of the too densely populated States towards expansion? Indeed those statistical density figures had already decided for war, long before the Cabinets of Europe gave the signal. However that may be, the new principle, able to prevent wars of expansion in the future, now that calamity has for more than four years emptied

its vials of destruction upon mankind, should be applied in order to put an end to it, and the sooner the better.

If one assumes the statistical figures to be correct, then that application for the relatively too densely populated States — France Germany, Italy, Austria-Hungary, Rumania and Servia — will lead to expansion, for the too thinly populated — Russia and Greece — to curtailing of territory. And whether expansion or curtailing of territory may ensue, the application of the new principle, as has been shown here, will constantly tend to the interest of each and all.

France, expanding on the only side where expansion is possible, will extend into Alsace-Lorraine, and see thereby its dearest dream realized.

Germany, continuing its historical line of progression, will increase its territory along the Baltic and in Poland.

Italy will see "unredeemed Italy" redeemed.

The extension of Austria-Hungary over part of Rumania will find justification and Bessarabia will be able to understand why it is added to Rumania.

And lastly, Servia by its port on the Aegean Sea will be awakened to a new and better life than before.

As regards Alsace-Lorraine one might maintain that Lorraine is rich in minerals, indispensable for Germany. Indeed German Lorraine possesses a rich supply of iron and coal.

The supply of iron in German Lorraine is estimated at 1,830,000,000 tons (1). We lack data for an accurate statement of the coal supply there (2). The iron supply however is to be found

(1) G. EINECKE und W. KÖHLER ("Das Minettegebiet von Lothringen und Luxemburg") in: The iron ore resources of the world. An inquiry made upon the initiative of the Executive Committee of the XI International Geological Congress, Stockholm 1910, vol. II, page 714.

(2) H. E. BÖKER ("Die Kohlenvorräte des Deutschen Reiches") in: The coal resources of the world. An inquiry made upon the initiative of the Executive Committee of the XII International Geological Congress, Canada 1913, vol. III, page 824, gives one figure for the Gesamtsaarbezirk, in which are included the Bavarian Palts and Alsace-Lorraine (see page 828).

mainly in the North West, in the neighbourhood of Diedenhoven and the coal supply in the North of Lorraine, in the neighbourhood of Forbach. Therefore both supplies being close to the frontier between German Lorraine and the rest of Germany, almost all German Lorraine could become French territory without the iron and coal fields being included therein. And should the iron and coal district become French, then Germany would be compensated for this loss of minerals in the West by the increase of territory in the East. Not by the annexing of Russian territory on the Baltic, as the Russian Baltic provinces possess neither coal nor ore. Wood, flax and hemp are the only important raw materials which this territory has at disposal (1). But Russian Poland is rich in minerals. In the South and South West, also where Poland borders on Germany, the earth hides in her lap a rich treasure of minerals, mainly consisting of coal, brown-coal (lignite), iron, lead (together with a small quantity of silver), zinc and copper (2). The Dombrowa coal fields, situated in the districts of Bendin and Olkusz, extend over an area of about 800 sq: Km. As regards the quality of the coal, it belongs to the first grade, according to GRÜNER's classification; it is dry coal. The supply is estimated at 2.525.245.000 tons (3). The lignite, found in the district of Bendin, is black in colour, and in appearance resembles ordinary coal. The annual production recently, previous to the year 1913, was about 115.000 tons. The supply is estimated at 63.000.000 tons (4). Iron ore is found chiefly in the South of Poland. The estimates, regarding the extent of the layers, are very contradictory and vary from 2000 to 11.000 sq: Km. The whole supply is roughly estimated at

(1) A. VON ENGELHARDT, *Die deutschen Ostsee-Provinzen Russlands* (1916), page 231.

(2) *L'aigle blanc. Revue des questions polonaises*, Mars 1918, page 130 etc.: "Les richesses minières de la Pologne".

(3) S. CZARNOCKI ("The basin of Dombrowa") in: *The coal resources of the world. An inquiry made upon the initiative of the Executive Committee of the XII International Geological Congress, Canada 1913*, vol. III, page 1152 sqq.

(4) *Ibidem*, page 1163.

300.000.000 tons (1). In normal times the ordinary production is at least 14.000.000 Pud per year (2).

Against the annexing of Russian Poland, or of a part thereof, by Germany one might raise the desirability of again elevating Poland to a State. It is not within the scope of this article to view from all sides the question of a new sovereign Poland. From an anthropo-geographical standpoint however such a desire does not seem wise. In itself, as well as united to Austrian and Prussian Poland, Poland forms a country which is entirely shut off from the sea and consequently lacks a necessary requisite for a lasting existence as an independent State. At present, belonging to three States, all three on the sea, it is better off anthropo-geographically than if it were an independent State, entirely excluded from the world's traffic by sea.

The principle of nationality is appealed to for the awakening of Poland, as well as of the lowlands on the Baltic, to renewed independent life. But this principle by no means implies that the hands of Time shall be put back and all those peoples and races, who in the course of time have risen into higher unifications, be awakened to new independence.

The enlargement of France, Germany, Italy, Austria-Hungary and Rumania, in conclusion, can only take place at the cost of Russia, that of Servia only at the expense of Greece. Russia and Greece will probably raise objections, but erroneously. Greece is too thinly, Russia much too thinly populated. Diminution of territory with retention of the number of inhabitants means, for both States, greater density of population and this greater density of population means greater intercourse, fuller social life, increase of

(1) The iron ore resources of the world. An inquiry made upon the initiative of the Executive Committee of the XI International Geological Congress, Stockholm 1910, vol. I, Preface, page XXXVI (Summary of the reports compiled by Prof. HJALMAR SJÖGREN).

(2) Prof. K. BOGDANOWITSCH, "Die Eisenerze Russlands, geologischer Charakter, Verbreitung und Vorräte der Lagerstätten". Ibidem, page 494.

concentration, greater strength, and the raising of the standard of civilization. If, in addition thereto, the Bosphorus and Dardanelles become internationalized, as is suggested (1), then Russia, although smaller, or rather just on that account, is on the way to a future more prosperous than her past.

Russia, even after part of its territory has been added to Germany, Austria-Hungary and Rumania, still remains in possession of an incalculable treasure of minerals. And also for Greece, the minerals, in the territory to be evacuated by Greece on behalf of Servia, are not indispensable (2).

(1) COLEMAN PHILLIPSON and NOEL BUXTON, *The question of the Bosphorus and Dardanelles*. London: STEVENS and HAYNES, 1917, page 236: "The most rational, judicious, and practicable solution is to internationalise the Bosphorus and the Dardanelles on the lines of the régime applied to the Suez Canal, and place them, together with sufficient hinterland to safeguard the strategic position, under the administration of an International Commission somewhat similar to that which has existed in the case of the Danube". In the year 1888 L. KAMAROWSKI, Professor at the University of Moscow, had already proposed something similar (see *Revue de droit international et de législation comparée*, vol. XX, page 141 and PHILLIPSON and BUXTON, pages 198 and 199). Contra: C. L. TORLEY DUWEL, *De Dardanellen. Een vraagstuk voor het komend Congres* (The Dardanelles. A question for the coming Congress) (1918), page 121 etc.

(2) See J. CVIJIC, *Grundlinien der Geographie und Geologie von Mazedonien und Altserbien*, in: *Ergänzungsheft No. 162 zu PETERMANN's Mitteilungen* (1908) *Ergänzungsband 34*, page 251 etc.: *Die Kampagna und der Golf von Saloniki*.

VI

From Mars to Minerva

The history of the World portrays for us the ever-varying image of the spreading of mankind over the earth. Originally, when the peoples came seldom or not at all in contact with each other, when they were strangers to each other, they made acquaintance arms in hand. The strong people conquered the weak and took possession of the country. Fighting, humanity has spread itself over the earth. War was originally the form of intercourse among the peoples. Horrible war with all its horrors, has been the giant instrument of dividing the earth's surface among the peoples (1). That dividing process is not yet ended, and will not end, until the earth is so proportionately inhabited by humanity, that in every place as many people live as may coincide with the soil and situation (2).

There is room on the earth for all the peoples, providing the soil is proportionately divided amongst them. This work as of old may be done with the help of the old instrument, War. But that instrument has only a cutting property, it divides the soil, but often unfairly. For the fairness of division it offers no guarantee. And it can offer no such guarantee because it is only a cutting, and not at the same time a measuring instrument.

The solving of the problem of the proportionate dispersion of the peoples over the earth has been reserved for anthropo-

(1) "L'histoire est là pour nous dire que l'acquisition de territoire est presque toujours, malgré des dénégations aussi mensongères que solennelles, l'objectif réel de la plupart des guerres entreprises" (BONFILS, page 1167).

(2) RATZEL, *Anthropo-Geographie*, II (1891), page 293.

geography. That it has not been called upon before must be ascribed to its youth. Its father was Dr. FRIEDRICH RATZEL (1844—1904), an unassuming scholar, originally a chemist, afterwards successively, zoologist, geographer, geologist, travelling journalist, and finally Professor of Geography at Munich and Leipzig. In 1822 appeared his: "Anthropo-Geographie oder Grundzüge der Anwendung der Erdkunde auf die Geschichte", in 1891 the sequel thereto under the title: "Die geographische Verbreitung des Menschen", in 1896 "Der Staat und sein Boden, geographisch betrachtet", and in 1897 "Politische Geographie oder die Geographie der Staaten, des Verkehres und des Krieges", of which work in 1903 a re-written second edition saw the light. By these works RATZEL laid the foundation for the exercise of anthropogeography (1), of the oldest science, geography, the youngest branch.

Notwithstanding its youth anthropogeography has already attained considerable importance. Prof. G. W. HOKE, Professor of the Ohio State Normal College at Oxford in Ohio, in August, 1906 declared: "Political-, economical-, or anthropogeography are worth the best effort of a lifetime, and demand nothing less (2)", from which opinion one may estimate the high demands made by him upon its students. Those demands had already been characterized by H. J. MACKINDER, M. A., when, in his Presidential Address to section E. (Geography) at the Ipswich Meeting of the British Association on September 12th., 1895, he declared: "The anthropogeographer is in some sense the most typical and complete of geographers. His special department requires a knowledge of all the other departments. He must study geomorphology without becoming a geologist, geophysics without becoming a physicist, biogeography without becoming a biologist" (3).

(1) That F. RATZEL was really the founder of Anthropo-Geography, is proved by MAX ECKERT in PETERMANN'S *Mitteilungen*, 1909, page 70: "Zur Methodik der Anthropo Geographie".

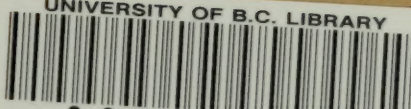
(2) *The Geographical Journal*, January 1907, page 67.

(3) *Op. cit.*, October 1895, page 375.

In the preceding pages an appeal has been frequently made to anthropo-geography. May that appeal not be in vain, and may its answer once more prove that science is the greatest benefactor of humanity. And should the results of its investigation not meet the views of everyone, one must recollect that the progressive movement of science is not to be arrested, and that all attempts to do so must unconditionally fail before the confession — And nevertheless it moves!

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